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Attorneys for Defendant Keith R. Shultz

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA,
BILLINGS DIVISION**

DENICE D. FABRIZIUS and WILLIAM)
FABRIZIUS,)

Plaintiffs,)

v.)

KEITH R. SHULTZ, M.D.,)
YELLOWSTONE SURGERY CENTER,)
DOES I through X, and ROE)
CORPORATIONS I through X, inclusive,

Defendant.

Cause No.:

CU-08-114-BLG-RFC

**PETITION AND NOTICE OF
REMOVAL PURSUANT TO
28 U.S.C. §§ 1441(a) AND 1446**

Pursuant to 28 U.S.C. § 1332 (Diversity Jurisdiction), § 1441 (Actions Removable), and § 1446 (Procedures for Removal), Defendant Keith R. Shultz, M.D., hereby gives notice of removal of the above action to the United States District Court for the District of Montana, Billings Division. Pursuant to the requirements of 28 U.S.C. § 1446(a) that notice of removal shall contain a "short and plain statement of the grounds for removal," the Defendant hereby states that removal of this matter

to Federal Court under "Diversity" jurisdiction is proper based on the following:

1. On March 20, 2008, Plaintiffs filed a civil complaint in the Montana Thirteenth Judicial District Court, Yellowstone County, Cause No. DV 08-417, seeking relief against Defendants ("Plaintiffs' Complaint"). See copy of Plaintiffs' Complaint, attached hereto as Exhibit "A".
2. Defendants received a copy of the summons and complaint on November 3, 2008.
3. The notice of removal is timely under 28 U.S.C. § 1446(b).
4. The Plaintiffs, Denice and William Fabrizius, are residents of Fremont County, State of Wyoming. Defendant Keith Shultz, M.D., is a resident of Yellowstone County, State of Montana. Defendant Yellowstone Surgery Center, LLC, is a Montana LLC, with its principal place of business in Yellowstone County, State of Montana.
5. The amount in dispute is more than \$75,000.00. Plaintiffs' Complaint is a medical malpractice case based on negligence. Plaintiffs seek all compensatory damages allowed by law, including economic and non-economic damages, loss of consortium, permanent physical impairment, life care expenses and disfigurement damages. The total sum of all damages sought by Plaintiffs is greater than \$75,000.

WHEREFORE, Defendant Keith R. Shultz, M.D., hereby issues notice that Cause No.DV 08-417, formally pending in the Thirteenth Judicial District, Yellowstone County, Montana, has been removed to the United States District Court for the District of Montana.

DATED this 11th day of November, 2008.

BROWN LAW FIRM, P.C.

By /s/ John J. Russell
John J. Russell
P.O. Box 849
Billings, MT 59103-0849
Attorney for Defendant Keith R. Shultz

CERTIFICATE OF SERVICE

I hereby certify that, on November 11, 2008, a copy of Petition and Notice of Removal was served on the following persons by the following means:

| | | | |
|-------------------|---------------|-------------------|-----------------------------|
| <u>1,2,3,4</u> | CM/ECF | <u> </u> | Fax |
| <u>5</u> | Hand Delivery | <u> </u> | E-Mail |
| <u> </u> | Mail | <u> </u> | Overnight Delivery Services |

1. Clerk, U.S. District Court

2. David R. Paoli
Paoli, Latino & Kutzman, P.C.
257 West Front Street
P.O. Box 8131
Missoula, MT 59802

3. Stephen D. Ochs
805 South Reserve Street
Missoula, MT 59804

4. Richard E. Gillespie
50 S. Last Chance Gulch, 3d Floor
P.O. Box 598
Helena, MT 59624

5. Clerk of District Court
P. O. Box 35030
Billings, MT 59107

By: /s/ John J. Russell
John J. Russell
Attorney for Defendant

David R. Paoli
Heather M. Latino
John A. Kutzman
PAOLI, LATINO & KUTZMAN, P.C.
257 West Front Street
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805 South Reserve St.
Missoula, MT 59804

Attorney for Plaintiffs

CLERK OF THE
DISTRICT COURT
LAURA A. BRENT

2008 MAR 20 PM 1 55

FILED

BY

DEPUTY

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY**

DENICE D. FABRIZIUS and
WILLIAM FABRIZIUS,

Plaintiffs,

vs.

KEITH R. SHULTZ, M.D.,
YELLOWSTONE SURGERY
CENTER, DOES 1 through X, and
ROE CORPORATIONS I though X,
inclusive,

Defendants.

Cause No. **DV 08-0417**
Dept No.. **INGRID GUSTAFSON**

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

120/243

COME NOW Plaintiffs, Denice D. and William Fabrizio (hereafter "Denice Fabrizio" and "Bill Fabrizio"), for their causes of action against the Defendants, and allege as follows:

1. Plaintiff, DENICE FABRIZIUS, is and was at all times herein mentioned, an individual residing in the State of Wyoming.

2. Plaintiff, BILL FABRIZIUS, is and was at all times herein mentioned, an individual residing in the State of Wyoming.

3. That at all times mentioned herein, Plaintiffs were informed and believed and, therefore, allege that Defendant KEITH R. SHULTZ, M.D. was a resident and licensed physician in Yellowstone County of Montana.

4. That at all times mentioned herein, Plaintiffs were informed and believed and, therefore, allege that Defendant YELLOWSTONE SURGERY CENTER, was a licensed corporation and healthcare facility in Yellowstone County of Montana.

5. That at all times mentioned herein, whether individual, corporate, associate or otherwise Defendants, Does 1 – X and Roes Corporations 1 – X are unknown to Plaintiffs, who therefore sue said Defendant by such fictitious names and will ask to amend this Complaint to show their true names and capacities when the same have been ascertained. Plaintiffs are informed and believe and, therefore, allege that the Defendant designated as a DOE or ROE is negligently and/or legally responsible in some manner for the events described herein, and negligently and/or legally caused injury and damages to the Plaintiffs as alleged herein.

6. On November 10, 2004, Denise Fabrizius was seen and treated by Keith R. Shultz, M.D. at the Yellowstone Surgery Center located in Billings, Montana.

7. That same day, Dr. Shultz elected to perform a C6-7 cervical epidural steroid block on Denise for the treatment of and relief for neck pain with the diagnosis of cervical spondylosis.

8. Wherein Dr. Shultz placed the epidural needle for the cervical epidural block, Denise "jumped" and verbalized to Dr. Shultz her sensation of instantaneous and excruciating pain radiating down her entire left arm and hand.

9. Dr. Shultz, without first repositioning the epidural needle placement and waiting for complete resolution of her left arm pain, proceeded to inject a combination of radio-opaque dye, local anesthetic and steroid medication.

10. Within minutes, Denise was returned to the post-procedure recovery and observation unit of the Yellowstone Surgery Center where she advised the nursing staff of her intense left arm and hand pain.

11. Dr. Shultz later examined Denise while she was still recovering in the unit and discharged her back to her home in Pavilion, Wyoming.

12. Denise drove back to Billings, Montana the next day, November 11, 2004, for urgent evaluation in the Emergency Department at Saint Vincent Healthcare for Denise's complaints of persisting, increasing and intense pain of her left arm and hand.

13. Dr. Shultz has not seen nor treated Denise for her continuing and incapacitating left and, later, right arm pain.

14. On November 27, 2004, Denise was examined and treated by Mary Neal, M.D. in Riverton, Wyoming for her complaint of intense left arm pain, hypersensitivity and weakness.

15. At that time Dr. Neal diagnosed Denise's pain as severe RSD (Reflex Sympathetic Dystrophy).

16. Denise was later examined and treated by Alan Brewer, M.D., a pain specialist at the University of Colorado in Denver in January of 2008.

17. Dr. Brewer diagnosed Type II CRPS (Complex Regional Pain Syndrome) or a subset of RSD

FIRST CAUSE OF ACTION

18. The Plaintiffs hereby incorporate the foregoing allegations herein as though said paragraphs were fully set forth in full herein.

19. Dr. Shultz failed to properly evaluate Denise prior to recommending and performing the cervical epidural steroid block.

20. Dr. Shultz failed to properly perform the cervical epidural block.

21. Dr. Shultz failed to recognize the mal-position of the epidural needle placement and failed to reposition the needle after being told by Denice that she had intense radiating left arm pain.

22. Dr. Shultz proceeded to inject Denice Fabrizio in spite of her complaints of continued left arm pain at the time of the epidural block.

23. By reason of these failures, Dr. Schultz directly and proximately caused and contributed by his negligence to Denice's post-procedure neurological injury, permanent disability and damages.

SECOND CAUSE OF ACTION

24. The Plaintiffs hereby incorporate the foregoing allegations herein as though said paragraphs were fully set forth in full herein.

25. Yellowstone Surgery Center, operating a state licensed healthcare facility in the State of Montana, failed to properly monitor and assure the clinical competence of Dr. Shultz, an anesthesiologist, shareholder and healthcare provider.

26. Yellowstone Surgery Center Failed to maintain accurate, timely and complete medical records concerning the medical care provided by Dr. Shultz to Denice.

27. By reason of these failures, Yellowstone Surgery Center caused and contributed through its negligence to Denice's post-procedure neurological injury, permanent disability and damages.

THIRD CAUSE OF ACTION

28. The Plaintiffs hereby incorporate the foregoing allegations herein as though said paragraphs were fully set forth in full herein.

29. The injury to Denice occurred without any fault of her own.

30. The instrumentality of the injury to Denice was under the exclusive control of Dr. Shultz at the time Denice was injured.

31. Denice's injury is one that does not occur in the ordinary course of things and would not have occurred if Dr. Shultz had used proper care.

FOURTH CAUSE OF ACTION

32. The Plaintiffs hereby incorporate the foregoing allegations herein as though said paragraphs were fully set forth in full herein.

33. That as a direct and proximate result of Defendants' negligence, Bill Fabrizius has suffered the loss of consortium, society and comfort of Denice in amounts all to be proven at trial.

PRAYER

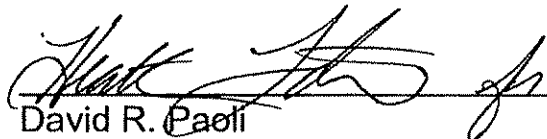
WHEREFORE, the Plaintiffs pray for judgment against the Defendants and each of them, as follows:

- a. For compensatory, economic, non-economic, loss of consortium, permanent physical impairment, life care expenses and disfigurement damages, all in an amount according to proof;
- b. For post-judgment interest at the maximum legal rate;
- c. For fees and costs of suit herein; and
- d. For such other and further relief as this Court deems just and proper.

JURY DEMAND

COME NOW the Plaintiffs and demand a trial by jury.

DATED this 18th day of March, 2008.



David R. Paoli
Attorneys for Plaintiff
Paoli, Latino & Kutzman, P.C.